CWP NO.11658 OF 2004

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision: 31st August, 2006

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Raj Pal and others.

.... Petitioner(s)

Versus

Director Consolidation, Haryana and another.

.... Respondents

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CORAM: HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA
HON'BLE MRS.JUSTICE NIRMAL YADAV

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Present:- Mr. Narender Hooda, Advocate, for the petitioners.

Mr. Ashish Kapoor, Advocate, for the respondent No.1.

Mr. D.K.Khanna, Advocate, for respondent No.2.

Nirmal Yadav, J.

Petitioners have sought the issuance of a writ in the nature of certiorari for quashing the order Annexure P/11 dated 14.7.2004 passed by Joint Secretary, exercising powers of Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, hereinafter referred to as `the Act'; order Annexure P/10 dated 13.7.2001 passed by the Settlement Officer and order Annexure P/9 dated 29.5.2001 passed by the Consolidation Officer, vide which respondent No.4 has been allotted 5 marlas of land, out of Khasra No.480, being Gair Bishwedar.

The facts, in brief, are that respondent No.2 Ruldu Ram and others filed a petition under Section 42 of the Act before the Director, Consolidation, Haryana, requesting that they may be allotted some land for residential purposes, out of Khasra No.480, which was reserved for

allotment in the shape of plots to the non-proprietors for residential purposes, under the scheme during consolidation. The said land is still lying vacant. However, the possession was not delivered to them till the filing of the petition and, therefore, they could not construct their houses. Inspite of the notice issued to the Gram Panchayat, none appeared before the Additional Director Consolidation, Rohtak. However, respondent No.2-applicant submitted a writing on behalf of the Panchayat that if the plot, after partition, was given to the petitioners, the Panchayat would have no objection. Accordingly, exparte proceedings were effected against the Panchayat. The applicants demand was considered. Additional Director remanded the case to the Consolidation Officer, Hisar with a direction that he should verify the record of the consolidation if any land was reserved for the residence of Gair Biswedars and whether the same was still available and secondly if any list of Gair Biswedars was attached with the Scheme. In case any land was reserved for the Gair Biswedars, then the same be given to them as per the list after partition so that they could construct their houses. The Consolidation Officer on verifying the record found that Khasra No.480 was reserved for Gair Biswedars for the purposes of residential houses. A list of Gair-Biswedars was also attached with the Scheme and, therefore, he ordered that a plot of 5 marlas be given to every Gair Biswedar in Khasra No.480. List of Gair-Biswedars to whom the plots were allotted was, therefore, placed on the file. This order was challenged by Raj Pal, the petitioner, as Ex-Sarpanch of the village mainly on the ground that he was not given an opportunity of hearing. According to him when the case was remanded he was the Sarpanch of the village, therefore,

notice should have been issued to him. It was further stated that after serving notice to the present Sarpanch, who did not appear, the Panchayat was proceeded against exparte. Petitioner's appeal was dismissed on the ground that it was barred by limitation and secondly he was not the Sarpanch and, therefore, had no right to file the appeal. Aggrieved by the said order, Raj Pal and other petitioners filed appeal under Section 21(3) of the Act before the Settlement Officer pleading that neither any opportunity of hearing was given to the petitioners nor any spot inspection was conducted when the order dated 22.11.2000 was passed for allotment of plots to 24 persons. It was further pleaded that the land bearing Khasra No. 480 was the property of Maharaja Harinder Singh.

Respondent No.2 Ruldu Ram contested the appeal on behalf of all the applicants stating that as per the jamabandi of the year 1999-2000, Maharaja Harinder Singh was the owner of Khasra No.480 which was in possession of Gair Marusian of villages Dhana Kalan Kundnapur, Dhani Peerwali, Dhani Kumharan, Dhana Khurd Rampura. Said Khasra Number has been described as Gair Mumkin Bara. As per the Scheme of the consolidation, residential plots were to be given to the Gair Marusian and Gair Biswedars. Petitioners did not have any documentary proof to prove any interest or title in khasra number 480. Settlement Officer, after taking into consideration the facts and evidence on record came to the conclusion that though the Gram Panchayat was issued notice but the Sarpanch refused to accept the summons and, therefore, it was proceeded against exparte. The petitioners did not have any title or interest in the suit property and, therefore, it was not necessary to give any opportunity of hearing to them.

Since the petitioners had no legal right, the appeal was dismissed. The petitioners thereafter approached the Joint Secretary exercising the powers under Section 42 of the Act challenging the order of the Settlement Officer. After considering the arguments, the Joint Secretary also dismissed the petition filed by the petitioners. It was observed that the petitioners are/were neither the owners nor Gair Biswedars nor the tenants under the original owner of the suit property. There is no documentary evidence in their favour. The owner of the land in question is Mehrawal Khiwaji Trust etc and it is in possession of Gair Marusian, therefore, it has been rightly allotted to the Gair Biswedars.

We have heard the learned counsel for the parties.

Learned counsel for the petitioners argued that respondent No.2 and other Gair Biswedars could not be allotted this land as it was never reserved for the purposes of allotment to the Gair Biswedars. It was further pleaded that they are in possession of the suit property since the times of their fore-fathers and they have been uprooted from the suit property without giving any opportunity of hearing. He further argued that Civil Court has given a clear finding that the disputed land was never reserved for allotment of plots to the Gair Biswedars of the village but the authorities have ignored the findings of the Civil Court. He further argued that the authorities have passed the orders without spot inspection. In case the spot inspection was conducted, the possession of the petitioners would have been found on the suit property. Gram Panchayat had no interest in the property, therefore, no notice was required to be issued to the Gram Panchayat and as such the petitioners have been prejudiced.

On the other hand, learned counsel for the respondents argued that respondent No.2 and others had filed a petition before the Consolidation Officer under Sections 21(3) and 43 of the Act for allotment of the land to the non-proprietors/ Gair Biswedars as a list of said persons had been drawn at the time of consolidation and Khasra No.480, which belonged to Maharaja Harinder Singh, was lying vacant.

After going through the records we are of the view that the petitioners have failed to prove that they had any title or interest in the suit property. No documentary evidence has been produced on record to prove their interest in the suit property. In case they were in possession, this fact would have been found entered in the revenue records. As per the consolidation authorities, the Scheme under the consolidation had provided for allotment of residential plots to the non-proprietors/Gair Biswedars of the village. The list of said persons was also annexed with the Scheme. As per jamabandis for the years 1989-1990 and 1999-2000, Khasra No. 480 is owned by Maharaja Harinder Singh and it is in possession of Gair Marusians of various villages namely, Dhana Kalan Kundnapur, Dhani Peerwali, Dhani Kumharan, Dhana Khurd Rampura. The nature/quality of the land has been described as Gair Mumkin Bara. The Scheme prepared during consolidation clearly provides that the land has to be distributed to the non-proprietors/ Gair Biswedars of the village, though it does not provide for a specific khasra number out of which land has to be allotted to the said persons. However, land bearing Khasra No. 480 is owned by Maharaja Harinder Singh. Keeping in view the requirement of non-proprietors/Gair Biswedars, the land belonging to Maharaja Harinder Singh

has been allotted to them.

It is the duty of a welfare State to provide the means and opportunities whereby all its members can reach minimum standard of economic security, social status, culture and health. The welfare State, therefore, should take positive measures to assist the community at large to act in collective responsibility towards its members to assist them. The Apex Court in the case of Murlidhar Dayandeo Kesekar Versus Vishwanath Pandu Borde, (1995 Supp(2) SCC 549 has observed as under:-

> " * * * Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes, to fulfil the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a trusism. The core of the commitment of the Constitution to the Social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles- the trinity – are the conscience of the Constitution. Political democracy has to be stable.

> Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the Dalits and Tribes and to distribute material resources of the community to them for common welfare etc."

In view of the above, we are of the opinion that the economic empowerment to the poor, Dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and tribes. We do not find any infirmity in the orders passed by the competent authorities.

Consequently, the writ petition is dismissed. Respondent No.1 is, however, directed to regularise the possession of the non-proprietors/ Gair Biswedars including respondent No.2 over the land in question as per rules by imposing the necessary conditions of not to substitute/ transfer/ sale etc. of the allotted plots by the allottees in view of the constitutional objective of providing them socio-economic justice and for improving their social and economic status.

(Nirmal Yadav)
JUDGE

(Ashutosh Mohunta)
JUDGE

August 31, 2006.
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